

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

LARRY T. FISHER,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner
of the Social Security Administration,¹

Defendant.

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Civil Action No. 3:06-CV-100-L

ORDER

This is a social security case. Plaintiff Larry T. Fisher (“Plaintiff” or “Fisher”) filed this action seeking judicial review of a final decision of the Commissioner of Social Security denying his applications for disability insurance under the Social Security Act, 42 U.S.C. § 401, *et. seq.* (the “Act”).² Pursuant to 28 U.S.C. § 636(b), and an order of the court in implementation thereof, the case was referred to United States Magistrate Judge William F. Sanderson, Jr., for review and submission of proposed findings of fact and recommendation for disposition. On June 5, 2007, the Findings, Conclusions and Recommendation of the United States Magistrate Judge (the “Report”) were filed, to which no objections were filed.

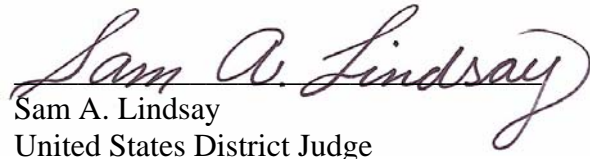
¹On February 12, 2007, Michael J. Astrue was sworn in as the Commissioner of Social Security. Pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure, Michael J. Astrue should be substituted for Commissioner Jo Anne B. Barnhardt as the defendant in this suit. No further action need be taken to continue this suit pursuant to the last sentence of the Social Security Act, 42 U.S.C. § 405(g).

²As detailed by the magistrate judge, this is Plaintiff’s second federal complaint related to denial of disability benefits. His first complaint was filed on June 18, 2003. *See Fisher v. Barnhart*, No. 3:03-CV-1357-D. In that case, the Honorable Sidney A. Fitzwater issued a final judgment remanding the case to the Commissioner and directing the Administrative Law Judge to, among other things, re-weigh the opinion of Plaintiff’s treating physician, Dennis Lehman, M.D., as well as the opinions of medical expert Anne Turbeville, M.D.

After a thorough analysis of the approximately 1200-page record in this case and applicable law, the magistrate judge concluded that the Administrative Law Judge's decision (standing as the final decision of the Commissioner) to deny Fisher disability benefits was "not supported by substantial evidence." *See* Report at 7. The magistrate judge found that the ALJ erred in his failure to follow the directives of Judge Fitzwater (*see supra* n. 2) and the related directives of the Appeals Council, and that such error prejudiced Plaintiff. *Id.* at 10-11. Based on these findings, and in light of the fully developed record in this case, the magistrate judge recommended that the district court reverse the ALJ's decision and grant Plaintiff the relief he sought, namely, a finding that Plaintiff is "disabled" under the Act and applicable regulations and an award of disability benefits to Plaintiff. The magistrate judge further recommended that the district court remand the case to the Commissioner solely for calculation and payment of the benefits to which Plaintiff is entitled. *Id.* at 11.

After an independent review of the pleadings, file, the fully developed record, applicable law, and the magistrate judge's findings and conclusions, the court determines that the magistrate judge's findings and conclusions are correct, and hereby **accepts** them as those of the court. Accordingly, the court **reverses** the Commissioner's final decision. The court determines that Plaintiff Larry T. Fisher is disabled under the Act and applicable regulations, and grants a period of disability insurance benefits commencing on October 3, 1996, the first date Dr. Lehman treated him. The court further determines that October 22, 1998, the protective filing date for Plaintiff's Supplemental Security Income application, is deemed the protective filing date of all claims for disability benefits to which he may be entitled. Finally, the court **remands** this matter to the Commissioner solely for calculation and payment of benefits.

It is so ordered this 31st day of July, 2007.


Sam A. Lindsay
United States District Judge